

Scott J. Yundt (CSB# 242595)
4049 First St., Suite 139A
Livermore, California 94551
Telephone: (925) 443-7148
Cell: (415) 990-2070
Fax: (925) 443-0177
Email: sjyundt@gmail.com
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

Anthony Rivera,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF
ENERGY and NATIONAL NUCLEAR
SECURITY ADMINISTRATION, an
agency of the U.S. Department of Energy,
Defendants.
Case No. 3:19-cv-2515
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

I. INTRODUCTION

1. Plaintiff Anthony Rivera (hereinafter “Rivera”), brings this action to redress violations of the Freedom of Information Act 5 U.S.C. § 552 (1966). Congress enacted FOIA to provide members of the public the right of access to federal agency records, except for those records (or portions thereof) that are protected from disclosure by exemptions and exclusions. Plaintiff challenges the failure of defendants United States Department of Energy (hereinafter “DOE”) and National Nuclear Security Administration (hereinafter “NNSA”), to provide all responsive, non-exempt, and non-excluded records (or portions thereof) requested by plaintiff in one FOIA request made to defendants, seeking agency records pertaining to DOE and NNSA

1 operations and activities. Defendants have failed to respond to FOIA requests in a timely
 2 manner, as provided by the statute, and this conduct amounts to a constructive denial of these
 3 requests. Thus, defendants have improperly withheld agency records from the plaintiff.

4 **II. JURISDICTION, VENUE, AND BASIS FOR RELIEF**

5 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B)
 6 (FOIA citizen suit provision) and 28 U.S.C. § 1331 (federal question) because this action arises
 7 under FOIA and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

8 3. Venue in this Court is proper because plaintiff resides in this district. *See* 5 U.S.C. §
 9 552(a)(4)(B); 28 U.S.C. § 1391(e).

10 4. Declaratory relief is appropriate under 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(F).

11 5. Injunctive relief is appropriate pursuant to 28 U.S.C. § 2202.

12 **III. PARTIES**

13 6. Plaintiff Anthony Rivera is a former employee of the Lawrence Livermore National
 14 Laboratory. He seeks the requested information as a concerned citizen and former employee to
 15 gain more understanding of specific actions of federal agencies (the DOE and NNSA).

16 7. Plaintiff suffers an informational harm by being denied access to the requested
 17 records. Plaintiff's injuries can be redressed by this suit and granting of the remedies requested
 18 herein.

19 8. Defendant United States Department of Energy is a federal agency whose
 20 overarching mission is to advance the national, economic, and energy security of the nation; to
 21 promote scientific and technological innovation in support of that mission; and to ensure the
 22 environmental cleanup of the national nuclear weapons complex. DOE is in possession and
 23 control of the records sought by plaintiff. As an agency of the executive branch of the United
 24 States government, DOE is subject to FOIA pursuant to 5 U.S.C. § 552(f).

25 9. Defendant United States National Nuclear Security Administration, a separately
 26 organized agency within the U.S. Department of Energy, is responsible for the management and
 27 security of the nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs.
 28 NNSA is in possession and control of the records sought by plaintiff. As an agency of the

1 executive branch of the United States government, NNSA is subject to FOIA pursuant to 5
 2 U.S.C. § 552(f).

3 **IV. LEGAL FRAMEWORK OF FOIA RELEVANT TO CLAIM**

4 10. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of
 5 all non-exempt and non-excluded agency records (or portions thereof) to those persons who
 6 make requests for records that reasonably describe such records and are made in conformance
 7 with applicable rules and procedures. *See* 5 U.S.C. § 552(a)(3)(A).

8 11. FOIA requires a federal agency to make a final determination on all FOIA requests
 9 that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays)
 10 after the receipt of such request, unless the agency provides notice to the requester of “unusual
 11 circumstances” meriting additional time for responding to a FOIA request. 5 U.S.C. §
 12 552(a)(6)(A)-(B).

13 12. FOIA expressly provides that in instances of “unusual circumstances,” an agency
 14 may delay its response to a FOIA request or appeal for up to 10 working days, but must provide
 15 written notice and must also provide “the date on which a determination is expected to be
 16 dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

17 13. Agencies are required to establish a telephone line or Internet service for requesters
 18 to inquire about the status of FOIA requests in which the agency claims “unusual
 19 circumstances.” This service must provide requesters with an estimated date that the agency will
 20 complete their action. 5 U.S.C. §552(a)(7)(B)(ii).

21 14. FOIA expressly provides that persons shall be deemed to have exhausted their
 22 administrative remedies if the agency fails to comply with the applicable time limitations
 23 provided by 5 U.S.C. § 552(a)(6)(A)(i)-(ii). 5 U.S.C. § 552(a)(6)(C).

24 15. FOIA provides that any person who has not been provided records requested
 25 pursuant to FOIA, after exhausting their administrative remedies, may seek legal redress from
 26 an appropriate federal district court to “enjoin the agency from withholding agency records and
 27 to order the production of any agency records improperly withheld from the complainant.” 5
 28 U.S.C. § 552(a)(4)(B).

1 16. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §
 2 552(a)(4)(B).

3 17. Pursuant to FOIA, this Court may assess attorney fees and litigation costs against
 4 the United States if plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).

5 18. Pursuant to the Equal Access to Justice Act, this Court may assess the costs of
 6 disbursements and costs of litigation, including reasonable attorney and expert witness fees
 7 against the United States if plaintiff substantially prevails in this action. 28 U.S.C. § 2412.

8 **V. FACTUAL ALLEGATIONS FOR PLAINTIFF'S FOIA REQUEST**

9 **Plaintiff's March 12, 2018 FOIA Request to NNSA: FOIA 18-00125-M**

10 19. On or about March 12, 2018 plaintiff sent a FOIA request to NNSA seeking
 11 Lawrence Livermore National Security, LLC (“LLNS”)reimbursement related documentation
 12 with dates, in accordance with DOE Acquisition Letter NO. AL 2016-06 dated August 4, 2016
 13 subject “Provisional Reimbursements and Allowability of Costs Associated with Whistleblower
 14 Actions,” including”

- 15 • All NNSA Livermore Field Office (“LFO”) documentation associated with the
 16 allowability of reimbursements to LLNS for all litigation legal fees and expenses to
 17 defend against former LLNS employee Anthony T. Rivera in District Court, and through
 18 all DOE OHA Investigations and Hearing Processes.
- 19 • Total itemized dollar amount reimbursed to LLNS to date for all litigation legal fees
 20 and expenses to defend against former LLNS Employee Anthony T. Rivera in District
 21 Court, and through all DOE OHA Investigations and Hearing Processes
- 22 • Total itemized dollar amount provisionally reimbursed to LLNS to date for all
 23 litigation legal fees and expenses to defend against former LLNS Employee Anthony T.
 24 Rivera in District Court, and through all DOE OHA Investigations and Hearing
 25 Processes.
- 26 •NNSA LFO Contracting Officer review, analysis, and conclusions pertaining to the
 27 allowability, approval or disapproval of reimbursements to date, for any and all ligation

1 legal fees and expenses to defend against former LLNS Employee Anthony T. Rivera in
2 District Court, and through all DOE OHA Investigations and Hearing Processes.

3 • Documents exchanged between the Contracting Officer and Department Counsel in
4 considering or determining contractor reimbursement for all litigation legal fees and
5 expenses to defend against former LLNS Employee Anthony T. Rivera in District Court,
6 and through all DOE OHA Investigations and Hearing Processes.

7 • All documents that demonstrate the contractor was “*responsible for accounting for*
8 *whistleblower proceeding costs appropriately for maintaining records, including*
9 *supporting documentation, adequate to demonstrate that costs claimed have been*
10 *incurred, are allowable to the contract and comply with FAR and DEAR cost*
11 *principles,*” related to all litigation legal fees and expenses to defend against former
12 LLNS Employee Anthony T. Rivera in District Court, and through all DOE OHA
13 Investigations and Hearing Processes.

14 • Documents exchanged between Department Counsel and LLNS contractor counsel
15 regarding legal costs expected or determined to be in excess of \$100,000 viewed as a
16 Department “significant matter,” related to all litigation legal fees and expenses to
17 defend against former LLNS Employee Anthony T. Rivera in District Court, and
18 through all DOE OHA Investigations and Hearing Processes

20 20. On or about March 14, 2018, NNSA sent Rivera an email acknowledging receipt of
21 request and providing the control number: 18-00125-M.

22 21. On or about May 16, 2018, Rivera sent NNSA a letter notifying the agency of its
23 failure to comply with FOIA and requesting an estimated date of completion.

24 22. On or about June 4, 2018 Rivera sent NNSA a letter notifying the agency of its
25 failure to comply with FOIA and requesting an estimated date of completion.

26 23. On or about July 12, 2018 Rivera sent NNSA a letter notifying the agency of its
27 failure to comply with FOIA and requesting an estimated date of completion.

28 24. On or about December 3, 2018 Rivera sent NNSA a letter notifying the agency of its

1 failure to comply with FOIA and requesting an estimated date of completion.

2 25. On December 11, 2018 NNSA sent an email to Mr. Rivera stating that the expected
3 release date of responsive documents would be March 29, 2019.

4 26. On or about December 20, 2018 Rivera sent NNSA a letter notifying the agency of
5 its failure to comply with FOIA and requesting an estimated date of completion.

6 27. On or about February 4, 2019 and February 19, 2019 Rivera sent NNSA a letter
7 notifying the agency of its failure to comply with FOIA and requesting an estimated date of
8 completion.

9 28. On or about March 1, 2019 Rivera sent NNSA a letter notifying the agency of its
10 failure to comply with FOIA and requesting an estimated date of completion.

11 To date, no responsive documents have been provided, nor any estimated date of
12 completion given.

13 **Plaintiff's November 7, 2018 FOIA Request to NNSA: FOIA 19-00032-M**

14 29. On or about November 7, 2018 plaintiff sent a FOIA request to NNSA seeking any
15 and all records pertaining to Career Indefinite employees or Supplemental Labor employee
16 Layoffs at Lawrence Livermore National Laboratory (LLNL) from June 1, 1984 to November 1,
17 2013, including;

18 • Any and all records pertaining to Career Indefinite employee and or Supplemental
19 Labor employee layoffs at LLNL from June 1, 1984 to November 1, 2013 that may
20 indicate the particular projects or programs associated with the layoffs from June 1,
21 1984 to November 1, 2013.

22 • Any and all records pertaining to Career Indefinite employee and or Supplemental
23 Labor employee regarding possible or imminent layoffs at LLNL from June 1, 1984 to
24 November 1, 2013. These records include but are not limited to:

25 • Warn Act Notifications
26 • Records pertaining to WARN Act notifications
27 • Who the recipients of the WARN Act notifications were
28 • Any and all records pertaining to internal or external notification of possible

1 and or imminent layoffs such as but not limited to the LNL internal paper called
2 the “Newsline” dated November 16, 2007 Col 32, No 39 on page to which
3 described layoffs. (*Excerpt of Article was provided in the request.*)

4 30. On or about November 15, 2018, NNSA sent Rivera an email acknowledging receipt
5 of request and providing the control number: 19-00032-M.

6 31. On or about December 11, 2018, NNSA sent a request for clarification related to 19-
7 00032-M to Rivera.

8 32. On or about December 13, 2018, Rivera sent NNSA a letter further clarifying the
9 request and agreeing to truncate.

10 33. On or about January 11, 2019 and February 5, 2019 Rivera NNSA a letter notifying
11 the agency of its failure to comply with FOIA and requesting an estimated date of completion.

12 34. On or about February 20, 2019, Rivera sent NNSA a letter notifying the agency of
13 its failure to comply with FOIA and requesting an estimated date of completion.

14 35. On or about March 4, 2019, Rivera sent NNSA a letter notifying the agency of its
15 failure to comply with FOIA and requesting an estimated date of completion.

16 To date, no responsive documents have been provided, nor any estimated date of
17 completion given.

18 **Plaintiff's Janurary 14, 2019 FOIA Request to NNSA: FOIA 19-00071-EW**

19 36. On or about January 14, 2019 plaintiff sent a FOIA request to NNSA seeking all
20 unclassified records relating to the August 30, 2013 LLNL HEAF 10kg port glass rupture,
21 including;

22 • Unedited High-bay Video and or videos of the August 30, 2013 LLNL HEAF 10kg
23 port glass rupture incident where “*As the experiment was detonated, the rupture and subsequent
venting was visible on the remote camera positioned in the high-bay and observed by the
experimental team.*”

24 • Unedited High-bay Video and or videos of the August 30, 2013 LLNL HEAF 10kg
25 port glass rupture incident where “*The Lead Firing Tank operator activated the Fire Fighter
Smoke Fans to ventilate the room prior to entry.*”

1 • Unedited High-bay Camera pictures of the August 30, 2013 LLNL HEAF 10kg port
2 glass rupture incident where “*The Lead Firing Tank operator activated the Fire Fighter Smoke*
3 *Fans to ventilate the room prior to entry.*”

4 • Unedited High-bay Camera pictures similar in nature to “The Area Post-Shot”
5 reference 2 below, (referenced document included in request) but to include all closer view
6 camera pictures taken of non-structural damage such as damage to diagnostics, cameras,
7 control racks, port glass, other experimental components outside the 10kg tank, and or attached
8 to the 10kg tank. These pictures may have been taken to evaluate and document Post-Shot
9 damage.

10 • Unedited High-bay Camera pictures taken outside of the High-bay, similar in nature to
11 “The Area Post-Shot” reference 2 below, but to include all closer view camera pictures taken of
12 non-structural damage such as damage to diagnostics, cameras, control racks, port glass, other
13 experimental components outside the 10kg tank, and or attached to the 10kg tank. These
14 pictures may have been taken in HEAF rooms outside the High-Bay or in other LLNL buildings
15 to evaluate and document Post-Shot damage.

16 • Records that detail where the “*Fire Fighter Smoke Fans*” vented the smoke to, after
17 the 10kg port glass rupture meaning the pathway of the smoke starting from the high-bay to its
18 eventual capture point, or to its release to the atmosphere. These records may include;

19 • The “*Fire Fighter Smoke fans*” vented or redirected the smoke through an
20 internal HEAF air filtration system or air scrubber system before venting to the atmosphere.

21 • The “*Fire Fighter Smoke fans*” vented or redirected the smoke directly to the
22 atmosphere without an air filtration system process or an air scrubbing process.

23 • The “*Fire Fighter Smoke Fans*” venting or redirecting smoke through and
24 internal HEAF air filtration system or air scrubber system before venting to the atmosphere, was
25 not a DOE/NNSA or local air quality requirement to address incidents deemed off-normal.

26 37. On or about January 15, 2019, NNSA sent Rivera an email acknowledging receipt of
27 request and providing the control number: 19-00071-EW.

28 38. On or about February 14, 2019, February 28, 2019 and March 8, 2019, Rivera sent

1 NNSA letters notifying the agency of its failure to comply with FOIA and requesting an
 2 estimated date of completion. To date, no responsive documents have been provided.

3 **Plaintiff's Janurary 18, 2019 FOIA Request to NNSA: FOIA 19-00078-R**

4 39. On or about January 18, 2019 plaintiff sent a FOIA request to NNSA seeking any
 5 and all documents related to reimbursement, provisional reimbursement, accrued legal fees , and
 6 related reimbursements to the contractor LLNS associated with the DOE 708 Whistleblower
 7 Complaint that Anthony T. Rivera filed against LLNS for the period May 18, 2018 through
 8 January 18, 2019. This request will include reimbursements not captured in NNSA FOIA 18-
 9 00183-R. It will also include:

10 • A detailed list of all LLNS accounts charged by LLNS LLC Corporate Senior
 11 Management, including Bechtel National, University of California, Babcock and Wilcox,
 12 Washington Division of URS Corporation, and Battelle, regarding any aspect of my dismissal
 13 from LLNS.

14 • All post NNSA FOIA 18-000183-R documents related to DOE/NNSA to the
 15 Contractor LLNS reimbursement and provisional reimbursement, for accrued legal fees and
 16 expenses for the hired legal firm Hanson Bridgett LLP.

17 • Any and all documents related to the total fee (legal fees + expenses) provided to legal
 18 firm(s) reimbursed, or provisionally reimbursed from DOE/NNSA to LLNS associated with
 19 DOE OHA case WBB-17-0010.

20 • Any and all documents related to the beginning date of each legal fee and expense.

21 • Any and all documents related to the closing date of each litigation fee and expense or
 22 state “in progress.”

23 •Any and all documents that are related-reimbursements defined as labor charged by
 24 internal LLNS staff in any way associated with DOE OHA case WBB-17-0010. These charges
 25 will include but are not limited to”

26 • Total charges of Jennifer Achtert
 27 • Total charges of Jennifer Szutu
 28 • All LLNS internal charges expended in support of LLNS litigation efforts, not

1 directly and completely paid for out of LLNS earnings or profits. This may include the
2 expenses of non-attorney LLNS managers and employees that charged LLNS accounts for
3 contributions to the DOE OHA case WBB-17-0010 response by Dorothy Liu with the legal firm
4 Hanson Bridgett LLP filed with the DOE OHA on January 23, 2018. This would include but not
5 limited to:

6 • Time charge for strategy meetings that were physical, by phone, or
7 email discussions, between lab attorneys and or retained attorneys, with LLNS non-attorney
8 staff

9 • Actual LLNS account numbers charged and account number
10 descriptions for all LLNS internal charges expended in support of LLNS litigation efforts, not
11 directly and completely paid for out of the LLNS earnings or profits.

12 • LLNS reimbursed legal fees plus expenses received from the NNSA to pay for the
13 legal services of Dorothy Liu and legal firm Hanson Bridgett LLP, and other hired legal firm(s),
14 where the deliverable in part or in whole, of those legal services was utilized to defend LLNS
15 for reviews where a relationship to the DOE 708 whistleblower complaint detail exist. Such
16 reviews may include but are not limited to:

17 • DOE Headquarters Legal Counsel meetings, inquiries, or investigations
18 • NNSA Headquarters Legal Counsel meetings, inquiries, or investigations
19 • NNSA LFO Legal Counsel or Contracting Officer meetings, inquiries, or
20 investigations

21 • Meetings, inquiries, or investigations between the NNSA LFO and DOE/NNSA
22 Headquarters.

23 40. On or about January 23, 2019, NNSA sent Rivera an email acknowledging receipt of
24 request and providing the control number: 19-00078-R.

25 41. On or about February 22, 2019, Rivera sent NNSA letters notifying the agency of its
26 failure to comply with FOIA and requesting an estimated date of completion.

27 42. On or about March 5, 2019, Rivera sent NNSA letters notifying the agency of its
28 failure to comply with FOIA and requesting an estimated date of completion. To date, no

1 responsive documents have been provided.

2

3 **VI. CLAIMS FOR RELIEF**

4 **Count I: Violation of the Freedom of Information Act: FOIA 18-00125-M**

5 39. The allegations made in all preceding paragraphs are realleged and incorporated by
6 reference herein.

7 40. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-
8 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in his
9 March 12, 2018 FOIA request to NNSA in a manner consistent with the 20-day statutory
10 period, or within 10 additional days if defendant claimed unusual circumstances existed.

11 41. By failing to provide plaintiff with any records responsive to his March 12, 2018
12 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
13 law under the Freedom of Information Act.

14 42. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
15 rights to access the records requested in plaintiff's March 12, 2018 FOIA request to NNSA.

16 43. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
17 provide all non-exempt and non-excluded records (or portions thereof) responsive to its March
18 12-2018 FOIA request to NNSA.

19 44. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
20 dispatch of the record as requested by plaintiff in his March 12, 2018 correspondence. 5 U.S.C.
21 §552(a)(6)(B)(i).

22 45. Defendants violated FOIA by failing to establish a telephone line or Internet service
23 for plaintiff to inquire about the status of this FOIA request that would specifically provide
24 plaintiff with an estimated date by which the agency would complete its action on this request. 5
25 U.S.C. §552(a)(7)(B)(ii).

26 46. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
27 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
28 records (or portions thereof) responsive to his March 12, 2018 FOIA request to NNSA.

1 47. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
2 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
3 (or portions thereof) responsive to plaintiff's March 12, 2018 request to NNSA has injured
4 plaintiff's interests in public oversight of governmental operations.

5 48. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
6 to FOIA. 5 U.S.C. § 552(a)(4)(E).

7 49. Plaintiff is entitled to costs of disbursements and costs of litigation, including
8 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
9 2412.

10 **Count II: Violation of the Freedom of Information Act: FOIA 19-00032-M**

11 50. The allegations made in all preceding paragraphs are realleged and incorporated by
12 reference herein.

13 51. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-
14 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in his
15 November 7, 2018 FOIA request to NNSA in a manner consistent with the 20-day statutory
16 period, or within 10 additional days if defendant claimed unusual circumstances existed.

17 52. By failing to provide plaintiff with any records responsive to his November 7, 2018
18 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
19 law under the Freedom of Information Act.

20 53. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
21 rights to access the records requested in plaintiff's November 7, 2018 FOIA request to NNSA.

22 54. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
23 provide all non-exempt and non-excluded records (or portions thereof) responsive to his
24 November 7, 2018 FOIA request to NNSA.

25 55. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
26 dispatch of the record as requested by plaintiff in his November 7, 2018 correspondence. 5
27 U.S.C. §552(a)(6)(B)(i). 33.

28 56. Defendants violated FOIA by failing to establish a telephone line or Internet service

1 for plaintiff to inquire about the status of this FOIA request that would specifically provide
2 plaintiff with an estimated date by which the agency would complete its action on this request. 5
3 U.S.C. §552(a)(7)(B)(ii).

4 57. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
5 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
6 records (or portions thereof) responsive to his November 7, 2018 FOIA request to NNSA.

7 58. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
8 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
9 (or portions thereof) responsive to plaintiff's November 7, 2018 request to NNSA has injured
10 plaintiff's interests in public oversight of governmental operations.

11 59. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
12 to FOIA. 5 U.S.C. § 552(a)(4)(E).

13 60. Plaintiff is entitled to costs of disbursements and costs of litigation, including
14 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
15 2412.

16 **Count III: Violation of the Freedom of Information Act: FOIA 19-00071-EW**

17 61. The allegations made in all preceding paragraphs are realleged and incorporated by
18 reference herein.

19 62. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-
20 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in his
21 January 14, 2019 FOIA request to NNSA in a manner consistent with the 20-day statutory
22 period, or within 10 additional days if defendant claimed unusual circumstances existed.

23 63. By failing to provide plaintiff with any records responsive to his January 14, 2019
24 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by
25 law under the Freedom of Information Act.

26 64. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
27 rights to access the records requested in plaintiff's January 14, 2019 FOIA request to NNSA.

28 65. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to

1 provide all non-exempt and non-excluded records (or portions thereof) responsive to his January
 2 14, 2019 FOIA request to NNSA.

3 66. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
 4 dispatch of the record as requested by plaintiff in his January 14, 2019 correspondence. 5 U.S.C.
 5 §552(a)(6)(B)(i).

6 67. Defendants violated FOIA by failing to establish a telephone line or Internet service
 7 for plaintiff to inquire about the status of this FOIA request that would specifically provide
 8 plaintiff with an estimated date by which the agency would complete its action on this request. 5
 9 U.S.C. §552(a)(7)(B)(ii).

10 68. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
 11 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
 12 records (or portions thereof) responsive to his January 14, 2019 FOIA request to NNSA.

13 69. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
 14 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
 15 (or portions thereof) responsive to plaintiff's January 14, 2019 request to NNSA has injured
 16 plaintiff's interests in public oversight of governmental operations.

17 70. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
 18 to FOIA. 5 U.S.C. § 552(a)(4)(E).

19 71. Plaintiff is entitled to costs of disbursements and costs of litigation, including
 20 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
 21 2412.

22 **Count IV: Violation of the Freedom of Information Act: FOIA19-00078-R**

23 72. The allegations made in all preceding paragraphs are realleged and incorporated by
 24 reference herein.

25 73. Defendants violated FOIA by failing to provide plaintiff with the responsive, non-
 26 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in his
 27 January 18, 2019 FOIA request to NNSA in a manner consistent with the 20-day statutory
 28 period, or within 10 additional days if defendant claimed unusual circumstances existed.

74. By failing to provide plaintiff with any records responsive to his January 18, 2019 FOIA request to NNSA, defendants have denied plaintiff's right to this information provided by law under the Freedom of Information Act.

75. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal rights to access the records requested in plaintiff's January 18, 2019 FOIA request to NNSA.

76. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to provide all non-exempt and non-excluded records (or portions thereof) responsive to his January 18, 2019 FOIA request to NNSA.

77. Defendants violated FOIA by failing to establish a telephone line or Internet service for plaintiff to inquire about the status of this FOIA request that would specifically provide plaintiff with an estimated date by which the agency would complete its action on this request. 5 U.S.C. §552(a)(7)(B)(ii).

78. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records (or portions thereof) responsive to his January 18, 2019 FOIA request to NNSA.

79. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records (or portions thereof) responsive to plaintiff's January 18, 2019 request to NNSA has injured plaintiff's interests in public oversight of governmental operations.

80. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to FOIA. 5 U.S.C. § 552(a)(4)(E).

3. Plaintiff is entitled to costs of disbursements and costs of litigation, including reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. § 2412.

VII. REQUEST FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter Judgment for plaintiff providing the following relief:

1 1. Expedite this case in accordance with 28 U.S.C. §1657(a) so as to resolve this case in
2 time for plaintiff to use the requested information in furtherance of its legitimate objectives.
3 Good cause is shown because “a right under...a Federal Statute would be maintained”. 28
4 U.S.C. §1657(a).

5 2. Declare that defendants have violated FOIA by failing to fully respond to the four
6 FOIA requests that are the subject of this complaint.

7 3. Direct by injunction that defendants immediately provide plaintiff with all non-
8 exempt and non-excluded records (or portions thereof), responsive to the FOIA requests that are
9 the subject of this complaint (FOIA 18-00125-M, 19-00032-M, 19-00071-EW, and 19-00078-
10 R).

11 4. Direct by injunction that defendants comply with the time requirements of FOIA, as
12 provided by both case law and statute, for the production of requested documents to plaintiff.

13 5. Direct by injunction that defendants comply with the requirement of FOIA to provide
14 an estimated date on which the agency will complete action on a request when the agency has
15 claimed “unusual circumstances,” as provided by both case law and statute.

16 6. Direct by injunction that defendants comply with the requirement of FOIA to
17 establish a telephone line or Internet service for requestors to inquire about the status of FOIA
18 requests, when the agency has claimed “unusual circumstances,” that would specifically provide
19 plaintiff with an estimated date by which the agency would complete its action. 5 U.S.C.
20 §552(a)(7)(B)(ii).

21 7. Direct by injunction that defendants are barred from any and all improper
22 withholdings of agency records.

23 8. Maintain jurisdiction over this action until defendants are in compliance with FOIA
24 and every order of this Court.

25 9. Grant plaintiff’s costs of litigation, including reasonable attorney fees, as provided by
26 FOIA, 5 U.S.C. § 552(a)(4)(E), and the Equal Access to Justice Act, 28 U.S.C. § 2412.

27 10. Provide such other relief as the Court deems just and proper.

1
2 Respectfully submitted this May 10, 2019.
3
4
5 /s/ Scott Yundt
6 SCOTT YUNDT (CSB # 242595)
7 4049 First St., Suite 139A
8 Livermore, California 94551
Telephone: (925) 443-7148
Cell: (415) 990-2070
Email: sjyundt@gmail.com
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28